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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,262	01/29/2002	Christopher John Frogley	P2759	4074

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/058,262

Applicant(s)

FROGLEY, CHRISTOPHER JOHN

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3800

*pmf*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I (Claims 1-8 and 14 (Claim 14 added to Group I because of argument presented by Applicant)) in Paper No. 3 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Because the election requirement is deemed proper the requirement is made final. Claims 9-13 are withdrawn from examination.

### ***Claim Objections***

Claim 14 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend upon another multiple dependent claim (in the instant case - Claim 8). See MPEP § 608.01(n).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In Claim 1, lines 3-4, the phrase “as hereinbefore defined” renders the claim indefinite because it is not known as to what text or drawing the phrase is referring.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellegaard (US 6,105,308) in view of JP1-157315.

As to Claim 1, Ellegaard discloses a growing medium (abstract) comprising a self-supporting block (abstract) formed from sphagnum (col. 2 line 15). Not disclose is a binding material being. JP1-157315, however, discloses a binder (“ethylene-vinyl acetate” of abstract written in English) with peat material. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the growing medium of Ellegaard by adding a binder as disclosed by JP1-157315 so as to allow the dried product to be compression-molded (see JP1-15315 abstract written in English).

As to Claim 2, Ellegaard as modified by JP1-157315 further disclose the binding material an adhesive in aqueous dispersion (“emulsion” of abstract in English of JP1-157315).

As to Claim 3, Ellegaard as modified by JP1-157315 further disclose the bonding material ethylene acetate adhesive (abstract in English of JP1-157315).

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As to Claim 5, Ellegaard as modified by JP1-157315 further disclose fibrous material dispersed through the sphagnum material (moss is considered to have fibrous material dispersed throughout itself).

As to Claims 6 and 7, Ellegaard as modified by JP1-157315 further disclose an exterior coating of fibrous material surrounding the growing medium ("paper casing" of Fig. of Ellegaard).

As to Claim 8, the limitations of Claims 5 or 7 are disclosed as described above. Not disclosed is the paper being shredded waste paper. However, because paper and waste paper were art-recognized equivalents at the time of the invention in those grow media where the exact paper used in the exterior coating was immaterial, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute waste paper for paper in the grow medium of Ellegaard as modified by JP1-157315.

Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellegaard (US 6,105,308) in view of JP1-157315 in further view of Langezaal et al. (US 5,218,783).

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the binder a thermoplastic. Langezaal et al., however, discloses a growing medium's binder as a thermoplastic ("polyurethane" of col. 2 line 22). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the growth medium of Ellegaard as modified by JP1-157315 by substituting polyurethane as disclosed by Langezaal et al. for ethylene vinyl acetate depending upon availability and price of binders.

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As to Claim 14, the limitations of Claims 1-8 are disclosed as described above. Not disclosed is a support tray with one or more apertures in combination with the growth medium. Langezaal et al., however, discloses a tray (5 of Fig. 2) in combination with the growth medium; the tray with solid sidewalls and the top and bottom open (see Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the growth medium of Ellegaard as modified by JP1-157315 by using the tray as disclosed by Langezaal et al. so as to provide an easy to use carrying tray.

### *Conclusion*

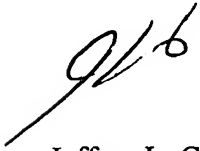
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sakate et al., Bunting, Clendinning et al, Clifford, Robinson, Adams, JP55-108444, JP9-313049, and JP11-131478 disclose in the prior art various growth media, some with peat or a binder.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

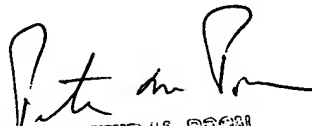
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



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